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**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY**

CYNTHIA BERRIGAN,)
Plaintiff)
v.)
PRESSLER & PRESSLER, LLP)
Defendant)
Case No.:)
COMPLAINT AND DEMAND FOR)
JURY TRIAL)
(Unlawful Debt Collection Practices)

COMPLAINT

CYNTHIA BERRIGAN (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against PRESSLER & PRESSLER, LLP (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the State of New Jersey and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Bayou, New Jersey.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 7 Entin Road in Parsippany, New Jersey, 07054.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection

1 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
2 deceptive, or misleading representation or means in connection with the collection
3 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
4 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
5 1692f. The FDCPA is designed to protect consumers from unscrupulous
6 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
7 unconscionable collection methods, conduct which harasses, oppresses or abuses
8 any debtor, and any false, deceptive or misleading statements in connection with
9 the collection of a debt.

12 13. In enacting the FDCPA, the United States Congress found that
13 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
14 collection practices by many debt collectors,” which “contribute to the number of
15 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
16 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
17 laws and procedures for redressing debt collection injuries to be inadequate to
18 protect consumers. 15 U.S.C. § 1692b.

21 14. Congress enacted the FDCPA to regulate the collection of consumer
22 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
23 abusive debt collection practices by debt collectors, to insure that debt collectors
24 who refrain from using abusive debt collection practices are not competitively
25

1 disadvantaged, and to promote consistent State action to protect consumers against
2 debt collection abuses.” 15 U.S.C. § 1692e.
3
4

5 **FACTUAL ALLEGATIONS**

6 15. At all relevant times, Defendant was attempting to collect two (2)
7 alleged consumer debts from Plaintiff.
8

9 16. The alleged debts at issue arose out of transactions, which were
10 primarily for personal, family, or household purposes.
11

12 17. On July 6, 2010 Defendant placed a levy on Plaintiff’s Pamrapo
13 checking account in the amount of \$5,299.01.
14

15 18. On July 29, 2010 Defendant removed \$875.00 plus an added \$75.00
16 levy fee from Plaintiff’s Pamrapo checking account.
17

18 19. At the time the Plaintiff had in total \$989.70 in her Pamrapo checking
20 account.
21

22 20. On July 30, 2010 upon finding out that her checking account had been
23 levied Plaintiff called Defendant and spoke with its agent “John”. Plaintiff
24 explained to “John” that the Pamrapo checking account was a child support and
25 unemployment fund account in which the funds were direct deposited.
26

27 21. Plaintiff informed Defendant that the amount of money they took
28 from her was the money directly deposited from her latest unemployment check
29
30

1 and the balance of her child support.

2 22. Plaintiff requested that Defendant remove the levy and return the
3 funds so that she could pay her rent for the upcoming month.
4

5 23. Plaintiff also told “John” that since it was a Friday and the bank
6 would be closed for the weekend Defendant was leaving her with no money and
7 no recourse at all until Monday.
8

9 24. “John” stated that Plaintiff would need to prove that the money in her
10 checking account was from child support payments and unemployment checks.
11 Plaintiff was to provide three (3) months worth of bank statements.
12

13 25. “John” also informed Plaintiff that if there were any other deposits
14 into the account then the Defendant was entitled to take them.
15

16 26. Plaintiff told “John” that her child support and unemployment check
17 total \$2,900.00 a month, but that the account can overlap if she waits till the
18 fifteenth of the month to pay the rent instead of on the first, that is why her
19 account could look like it has more deposits in it then it really does.
20

21 27. Plaintiff told “John” that her rent and living expenses far outreached
22 the amount she received from child support and unemployment.
23

24 28. “John” once again stated that Plaintiff would need to prove this.
25

29. On July 30, 2010 Plaintiff called up Defendant again to ask for the
name of the original creditor and the original amount of the debt, she spoke with

1 “Brittney”.

2 30. “Brittney” informed the Plaintiff that she had forfeited all of her rights
3 to any information regarding to the judgment issued against her.
4

5 31. The Plaintiff informed “Brittney” that she was neither confirming nor
6 denying the debt at this time, she merely wanted to know where the debt
7 originated.
8

9 32. “Brittney” again refused to provide the requested information.
10

11 33. On Friday, July 30, 2010, Plaintiff drafted a letter to Defendant and
12 faxed it on Monday, August 2, 2010. True and correct copies of the relevant
13 portions of the July 30, 2010 letter are attached hereto as Exhibit “A”.
14

15 34. Plaintiff once again requested Defendant to remove the levy because
16 the bank account in question was for child support and unemployment check
17 deposits only. See Exhibit A.
18

19 35. Plaintiff included copies of her checking account deposits made from
20 the months of April 2010 to June 2010. The only deposits into Plaintiffs checking
21 account were for child support and unemployment. See Exhibit A.
22

23 36. After Plaintiff faxed Defendant the above letter she called Defendant
24 to ensure her documents had been received.
25

26 37. Plaintiff was informed that she would need to resend her documents.
27

28 38. On August 3, 2010 Plaintiff once again called Defendant to see if her
29

1 documents had been reviewed; Defendant informed Plaintiff they had not yet
2 retrieved and/or reviewed her documents.

3 39. In response to this, Plaintiff re-faxed the documents to ensure
4 Defendant's receipt of the same.

5 40. On August 4, 2010, Plaintiff still without access to her checking
6 account, called Defendant to see if her documents had been reviewed; Defendant
7 informed Plaintiff they still had not yet retrieved and/or reviewed her documents.

8 41. In response to this, Plaintiff re-faxed the documents again.

9 42. On August 6, 2010 Plaintiff once again called Defendant to check on
10 whether her documents had been reviewed; Defendant informed her that it still had
11 not yet retrieved and/or reviewed her documents.

12 43. Plaintiff was frustrated by Defendant's lack of attention to this matter
13 as she was unable to provide food and pay for living expenses for her and her
14 children.

15 44. Almost a month went by until the levy was removed and Plaintiff
16 could once again access her unemployment and child support funds.

17 45. At no time prior to the levy was Plaintiff ever informed that a
18 judgment had been issued against her and that Defendant would be levying her
19 bank account.

20 46. Defendant also made repeated harassing telephone calls to Plaintiff at

1 her home telephone number in an effort to collect this alleged debt; the most
2 recent telephone call to Plaintiff was made on April 18, 2011.
3

4 47. These contacts are despite knowledge that Plaintiff is represented by
5 counsel and correspondence Plaintiff's counsel sent to Defendant on August 24,
6 2010 indicating to cease and desist any further contact with Plaintiff. A true and
7 correct copy of the August 24, 2010 letter is attached hereto as Exhibit "B".
8

9 48. Defendant's actions in attempting to collect the alleged debt were
10 harassing, abusive and highly deceptive.
11
12

CONSTRUCTION OF APPLICABLE LAW

13 49. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
14 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes
15 strict liability, a consumer need not show intentional conduct by the debt collector
16 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);
17 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
18 unintentional misrepresentation of debt collector's legal status violated FDCPA);
19 Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
20
21

22 50. The FDCPA is a remedial statute, and therefore must be construed
23 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235
24 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts
25

1 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d
2 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA)
3 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in
4 favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

5 51. The FDCPA is to be interpreted in accordance with the “least
6 sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168
7 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.
8 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
9 was not “made for the protection of experts, but for the public - that vast multitude
10 which includes the ignorant, the unthinking, and the credulous, and the fact that a
11 false statement may be obviously false to those who are trained and experienced
12 does not change its character, nor take away its power to deceive others less
13 experienced.” Id. The least sophisticated consumer standard serves a dual
14 purpose in that it ensures protection of all consumers, even naive and trusting,
15 against deceptive collection practices, and protects collectors against liability for
16 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
17 1318.

COUNT I
DEFENDANT VIOLATED
THE FAIR DEBT COLLECTION PRACTICES ACT

52. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692c(a) of the FDCPA when it communicated with Plaintiff after it had knowledge that Plaintiff was represented by counsel;
- c. Defendant violated § 1692c(c) of the FDCPA when it communicated with Plaintiff after being advised to cease further communication;
- d. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- e. Defendant violated § 1692d(5) of the FDCPA by causing Plaintiff's telephone to ring repeatedly or continuously with the intent to annoy, abuse or harass Plaintiff;
- f. Defendant violated § 1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;

- 1 g. Defendant violated § 1692e(10) of the FDCPA by using false
- 2 representations or deceptive means to collect or attempt to collect
- 3 a debt;
- 4
- 5 h. Defendant violated § 1692f of the FDCPA by using unfair and
- 6 unconscionable means with Plaintiff to collect or attempt to collect
- 7 a debt;
- 8
- 9 i. Defendant violated § 1692g of the FDCPA by failing to send
- 10 written notification, within five (5) days after its initial
- 11 communication with Plaintiff, advising Plaintiff of her rights to
- 12 dispute the debt or request verification of the debt;
- 13
- 14 j. Defendant acted in an otherwise deceptive, unfair and
- 15 unconscionable manner and failed to comply with the FDCPA.
- 16
- 17

18 WHEREFORE, Plaintiff, CYNTHIA BERRIGAN, respectfully pray for a
19 judgment as follows:

- 20 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
- 21 1692k(a)(1);
- 22 b. Statutory damages of \$1,000.00 for each violation of the FDCPA
- 23 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 24
- 25

- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, CYNTHIA BERRIGAN, demands a jury trial in this case.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

RESPECTFULLY SUBMITTED,

DATED: April 22 2010

KIMMEL & SILVERMAN, P.C.

By: /s/ Amy L. Bennecoff

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